



Appeal Decision

Site visit made on 13 June 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2023

Appeal A Ref: APP/M1595/C/22/3301888

Appeal B Ref: APP/M1595/C/22/3301889

37 Sanderling Close, East Tilbury, Essex RM18 8FF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - Appeal A is made by Dr Abdul Basit and Appeal B is made by Professor Emerita Dr Tehmina Basit against an enforcement notice issued by Thurrock Borough Council.
 - The notice was issued on 31 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of high fence with a maximum height of 1.8m.
 - The requirements of the notice are to:
 - 1) (a) Remove the high fence from the Land.
 - (b) Remove any foundations of the high fence from the Land;
 - (c) Remove all materials arising from steps (a) and (b) above from the Land.
 - The period for compliance with the requirements is two months.
 - Appeal A is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
 - Appeal B was brought on ground (a) however, since the prescribed fees have not been paid within the specified period, Appeal B on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decision

1. Appeal A is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. No further action is taken in respect of Appeal B.

Preliminary Matters

3. The Council were asked to provide copies of development plan policies referred to in the enforcement notice, along with those previous appeal decisions relating to the site, and to confirm whether the planning applications in respect of those fences at 41 and 55 Sandpiper Close and 45 Sanderling Close have been determined and, if so, what the decisions were. Despite repeated requests no response was received.
4. Exceptionally, as the development plan policies are publicly available on the Council's website, I viewed them online. The appellant is not prejudiced by this approach since they should be aware of the policy context, given the two previously refused applications¹ and subsequent appeals.

¹ (19/01642/FUL) (20/00848/FUL).

5. The previous planning applications included one for the fence as existing and a further which proposed reducing the area of fencing. Both applications were refused by the Council and subsequently dismissed on appeal. Neither of the main parties provided copies of the appeal decisions however, it is against this background which I have considered the deemed planning application, which is for the existing fence.

Appeal A on ground (a) and the deemed planning application

6. The main issue is the effect of the fence on the character and appearance of the area.
7. The appeal property is a detached dwellinghouse which occupies a corner position overlooking a communal landscaped area, within a modern housing estate. The front boundaries to the dwellings are predominantly open with some planting which gives the estate a pleasant soft-landscaped and distinctly open character.
8. Although I have no details before me of how the land previously appeared, it seems from the officer's report in respect of planning application reference 19/01642/FUL, that the land to the side of the dwelling was open and landscaped.
9. The fence, subject of the appeal, has been erected near the pavement edge. Given its height, length, prominence, and materials used in its construction, it forms a large and obtrusive feature which appears unacceptably enclosing, at odds with the sense of space and openness that characterises the estate. Consequently, the fence is a dominant and incongruous feature that appreciably harms the character and appearance of the area.
10. I saw at my visit those fences at 41 and 55 Sandpiper Close and 45 Sanderling Close, referred to by the appellant. However, those are not directly comparable as they are set back from the front elevation of those dwellings. Moreover, I have no evidence about whether permission has been granted for those fences. Consequently, their existence does not provide a strong argument to justify the appeal development.
11. There is no substantive evidence that the fence has a traffic calming effect nor that there were highway safety problems prior to its introduction. In any case, I note that the Council identified no harm in respect of highway safety. I acknowledge that there is no identified harm to the living conditions of or objections from residents, and third-party representations of support from the occupants of 35 and 45 Sanderling Close. However, these are neutral matters which cannot outweigh my above findings.
12. I acknowledge the appellant owns the land and their argument that it has eradicated littering. However, in the absence of substantive evidence regarding the extent of any littering, or that the appeal development is the only way this matter could be addressed, this is a matter of limited weight.
13. Overall, for the reasons given, I find that the fence unacceptably harms the character and appearance of the area contrary to policies CSTP22 and PMD2 of the Thurrock Local Development Framework Core Strategy and Policies for the Management of Development (as amended) 2015, and the Thurrock Design Guide; Residential Alterations & Extensions SPD July 2017. Together these

seek to ensure that development demonstrates high quality design founded on a thorough understanding of and positive response to the local context.

Other Matters

14. The appellant's misgivings about the Council's handling of the investigation and appeal matters, and the time taken to act in respect of other fences are separate matters which have no bearing on the planning merits of the development.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR